

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
THOMAS R. EDWARDS)

For Appellant: Thomas R. Edwards, in pro. per.
For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Thomas R. Edwards against a proposed assessment of additional personal income tax in the amount of \$439.28, plus interest, for the year 1975.

Appeal of Thomas R. Edwards

Subsequent to the filing of this appeal, appellant acquiesced in and paid the amount of the tax deficiency. The only issue remaining, therefore, is the propriety of the interest imposed on that deficiency assessment.

Respondent received a federal audit report from the Internal Revenue Service showing its disallowance of **several** itemized deductions claimed by appellant in his 1975 federal income tax return. On the basis of that report, respondent made corresponding adjustments in appellant's California personal income tax return and recomputed appellant's tax liability. The resulting notice of proposed assessment, issued on April 6, 1978, erroneously indicated that the adjustments were being made to appellant's reported income for the taxable year 1976, rather than 1975. Appellant protested the deficiency assessment as issued, contending that he owed no additional tax for 1976. On September 11, 1978, respondent withdrew its incorrect assessment for 1976 and issued a new proposed assessment for 1975, based upon the federal audit report. Appellant also protested that deficiency, and when respondent affirmed the proposed assessment, appellant filed this timely appeal.

Although appellant agrees he owes the additional **tax determined to be due for 1975, he contends that he should not be required to pay any interest on that deficiency.** He **apparently** believes that respondent's erroneous assessment for 1976 caused a delay which was not his fault but for which he is being penalized by having to pay interest. We find no merit in this contention.

Respondent's corrected notice of proposed assessment for 1975 was issued on September 11, 1978, well within the four-year statutory period allowed for such action. (Rev. & Tax. Code, § 18586.) With respect to the accrual of interest on a deficiency assessment, section 18688 of the Revenue and Taxation Code provides, in pertinent part:

Interest upon the amount assessed as a deficiency shall be assessed, collected and paid in the same manner as the tax ... from the date prescribed for the payment of the tax until the date the tax is paid.

In numerous prior decisions we have held that the imposition of interest on an unpaid deficiency is mandatory under this section. (See, e.g., Appeal of Frank R. and

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C. A. Moothart, Cal. St. Bd. of Equal., Feb. 8, 1978; Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974; Appeal of Ruth Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965.) The interest is not a penalty imposed on the taxpayer, but is compensation for the use of the money during the period of underpayment. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.)


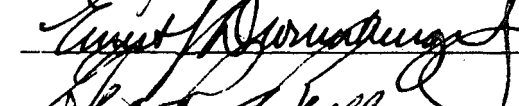
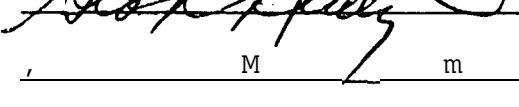
Respondent's erroneous assessment for 1976 in no way altered the fact that appellant concededly owed additional personal income tax for 1975. Under the circumstances, respondent has properly assessed interest on the amount of the deficiency from April 15, 1976, the date it was due, until May 20, 1979, the date it was paid.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Thomas R. Edwards against a proposed assessment of additional personal income tax in the amount of \$439.28, plus interest, for the year 1975, be and the same is hereby sustained, with the understanding that the amount which appellant has paid will be credited against the total amount due.

Done at Sacramento, California, this 8th day of April , 1980, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
_____, Member
_____, Member